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COMPETITION IN EDUCATIONAL MARKET IN RUSSIA IN THE FIRST DECADE OF THE 21ST CENTURY

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ABSTRACT

The study is based on a methodology proposed by European Association for Education Law and Policy for their research conducted in 2009 and devoted to commercialization, competition and corruption in European education. In the article, the attempt is made to apply their methods to analyze the competition in Russian educational market which existed before the adoption of new educational legislation which came into force in 2013. The subjects of examination in this article are: competition law in education, free and paid education, market prices and state funded HEIs. The author states that the legislation and court practice in Russia in the first decade of the 21st century enabled educational institutions to do some competitive kinds of activities but mainly education was considered as public service, not market good. Besides that, the legislation and the corpus of case-law were too complicated. Some laws and decisions made by courts and authorities might contradict one another. State-operated and private educational institutions had different rights and abilities. Thus, Russia needed to gather all the norms concerning activities in educational sphere into one law. This law was adopted in 2012 and came into force in 2013.

Keywords: public interest, courses selling, competition law, history of education, spin-offs

INTRODUCTION

The new law "On education in Russian Federation" that was adopted in December 2012 is considered by public opinion and by some experts as the law on commercialization of education which is directed against the excessive governmental control [5]. Such control might result in violation of competition rights in educational processes and relations. Under contemporary circumstances, an urgent academic issue is the question of competition in Russian education system which is on the world Top-20 [7]. Does the new legislation bring any novelties into this field? To answer this question, we need first of all to understand to what extent Russian education had been corrupted before the new legislation started to be worked on.

Some scholars have already done their research of some aspects of this problem. E.G. Popkova, V.V. Chashchin, and D.V. Bogdanov point out that the amplification of the requirements for quality and level of education of the labor force leads to the formation of modern mechanisms of interaction between the labor market and educational services, which is put into practice in using of personnel marketing, which fundamental task is the creation of an attractive image of an enterprise, as an employer, to ensure its human

resources activities with optimal quantity and quality [11]. M. Esyutina, C. Fearon, and N. Leatherbarrow highlight some of the quality issues associated with the Bologna process and reflect on how the statements underpin quality of learning and mobility in a European higher education area context [4]. They explore some of the issues raised from the documentation and examine some early experiences and challenges from a leading Russian university as part of a wider examination of higher education in a Russian context. M. Luk'ianenko, O. Polezhaev, and N. Churliaeva explain that engineering education in Russia is undergoing reforms, but the history of this form of higher education does not indicate that it will succeed in bringing it into line with current world standards, or even making it more able to contribute at a high level to Russian economic growth [10]. Some aspects of Russian educational policy are mentioned in the publications devoted to the whole spectrum of cultural policy [3] or to foreign cultural policy [1] of Russia. But there are almost no works specially devoted to the issue of competition of Russian higher education yet, except some social and demographic aspects [2; 8; 9]. Academic discourse provides us with no specific conclusions about the extent of competition in educational market in Russia under the circumstances of the former educational legislation.

Meanwhile, one can find some works devoted to the assessment of the level of commercialization in some other countries during that period of time [6; 12; 13]. Many of them are based on methodology proposed by the European Association of Education Law and Policy (ELA). Before its annual conference in 2009, this association sent out a questionnaire concerning different aspects of commercialization of education to interested people in European countries. The answers helped some academics who were members of the association to make their conclusions relevant for different European countries. Russia was not in that list. This article is an attempt to apply this method to Russia as the object of research.

FINDINGS AND DISCUSSION

The first steps in the ELA's method concern the competition law in education. The authors of the method offer us to answer some important questions:

- Is providing free education a commercial service according to national legislation?
- Is providing paid education a commercial service according to national legislation?
- Is there any case-law on the applicability of competition law to activities of HEIs?
- Is competition law applicable on the competition for students?
- Does liberalisation of the education market means that in the country universities and member states are losing their freedom to cooperate and to stimulate cooperation between institutions?

For Russia of the first decade of the 21st century, the answers are following.

The term "educational service" is found in the Law of the Russian Federation (RF) "On education" No. 3266-1, dated 10 July 1992 in the articles and clauses devoted to paid education. Only three times in the text of the Law use of the term concerned not only paid

education, but also a free one. In part 8, Article 19, it was stated: "Educational establishments according to agreements and together with enterprises, institutions, organizations may provide training to students as an additional (including paid) educational service." Similarly, in part 4, Article 50 one could read that students of all educational establishments have the right to "receive additional (including paid) educational services." Thus, paid services were only a part of a more general notion of "educational services". So, free education could be regarded as a service, too, and its providing, according to part 8, Article 19, was possible "with a license (permission) to the specified activity» only. In addition, clauses 16 and 17, Article 28 placed establishing the general principles of financing of educational services and financing of federal government educational institutions and educational services itself among the credentials of federal bodies of state authority in the field of education.

It turns out that education belonged to the sphere of services, rather than to the social sphere, regardless of being paid or free.

However, as the Law stipulated that educational organizations might be established in the legal forms provided by the civil legislation for non-profit organizations only (Article 11.1 of the RF Law «On Education»), commercial organizations were not allowed to carry on educational activities and, therefore, education was not regarded as a commercial service.

RF Law "On education" No. 3266-1 dated 10 July 1992 stipulated the right of educational institutions to attract additional financial resources, within the limits of the procedure established by RF legislation, by selling additional educational and other services specified in the statutes of educational institutions (part 8, Article 41). But the fact of providing paid education services did not mean their commercial nature. To become commercial, they were necessary to be provided not just for attracting additional financial resources, but for profit. According to part 2, Article 46 paid educational activities were not considered as business, if the derived income was used for covering costs of the educational process (including salaries), its development and improvement in the educational institution. If there was no business activity, one could not speak about commercial services.

Article 46 applied only to non-governmental educational institutions. Federal and local government agencies were not free at the disposal of revenues from providing paid educational services at all. Revenues might be used in accordance with the statutory objectives only. Therefore, such institutions generally could not be considered as ones carrying out commercial activities by means of paid educational services. Their services, rather, should be recognized as non-profitable ones. In addition, Article 47 of the Law «On Education», which determined the list of business activities of educational institutions, did not include the paid educational services in this list.

Strictly speaking, there was a case-law on the applicability of competition law to activities of HEIs. Although it probably should be a matter of the activity of education and HEI related authorities, not of the activity of HEIs themselves.

Private HEIs, which were licensed by the Ministry of Education or - later - by Ministry of Education and Science, had the same rights as state-operated ones. Ministry occasionally issued acts that limited competition in higher education and impaired the rights of private HEIs, in comparison, for example with Moscow State University. In such

cases private institutions sent the requirements to check such acts to Federal Antimonopoly Service (FAS). For example, in practice, as a result of the adoption of certain regulations which were issued by former Ministry of Education or the Ministry of Education and Science, it turned out that private educational institutions might participate in the competition for government grants and funds, but even if they won, they could not get budget money, because the Law «On Education» and the Budget Code contained certain amendments that did not allow to provide private institutions with such grants and funds. FAS responded to such appeals, explaining the contents of Article 15 of the Law "On Protection of Competition". This article prohibited limiting competition in governmental, ministerial and departmental decisions.

Such decisions were contained in the Protocol No. 4 of the Expert Council of the Federal Antimonopoly Service of Russian Federation on the development of competition in education and science dated 4 June 2007, Protocol No. 6 of the Expert Council of the Federal Antimonopoly Service of Russian Federation on the development of competition in education and science dated 29 April 2008. Amendments to the RF Law "On education" and the Federal Law "On Higher and Postgraduate Professional Education" based on these decisions were drafted and referred to the Ministry of Education and Science and the Ministry of Economic Development of Russian Federation for further joint elaboration and introduction to the Government of Russian Federation.

In particular, with the help of FAS, they succeeded in liberalization of participation of private universities in the competition for state support of innovative universities in the framework of national project "Education".

Competition law was not applicable for competition of students. The RF Law "On Competition Protection" applied to relationships that concerned the protection of competition, including the prevention and suppression of monopolistic activity and unfair competition, if Russia's legal entities and foreign legal entities, federal bodies of executive power, bodies of state power of Subjects of Russian Federation, local authorities, other bodies exercising functions of those agencies or organizations, as well as state budget funds, the Central Bank of Russia, individuals, including individual entrepreneurs were involved in such relationships. However, individuals were subjected to this law only when they did activities as business entities, to which students did not belong.

Competition of university entrants was regulated by the Order of the Ministry of Education and Science that approved the procedure of admission to the HEIs and a number of federal laws that established privileges for certain categories of citizens.

The competitiveness of universities in a liberalized market of educational services was substantially determined by the level of development of inter-university - especially international - contacts. Therefore, there were special sections devoted to international cooperation on the websites of most universities, which showed how well universities engaged in this type of their activities. In addition, the lack of budget financing (which accompanied liberalization of the education market) encouraged universities to open up foreign markets, and this might also encourage cooperation with foreign universities. That is why there was no lack of incentives for cooperation.

However, the same could not be said about the cooperation of universities within the country. Indeed, the situation of competition for applicants was not conducive to

cooperation of universities which provided educational services for the same national market. So the news about examples of such cooperation was lively discussed in the academic environment, and such news often became a sensation. For example, news about the agreement on strategic partnership between Lomonosov Moscow State University and St. Petersburg State University was actively discussed in blogs by representatives of the university community in August 2009. As a rule, if such cooperation was carried out, it was based in the framework of the international projects but not on a bilateral basis.

Cooperation of universities in Russia sometimes took the form of integration (as a result on the basis of several universities was established a federal or a national research university). However, this is not due to market mechanisms, but rather to state control of education. The market did not motivate strong universities to integrate, particularly if they would lose their brand names in case of it. In addition, the integration of HEIs could change the nature of the education market from competitive to oligopolistic one.

The further steps of the ELA's method concern case-law:

- Is there any case law on unfair clauses (clauses abusives) in school contracts by national Fair Trading agencies in state funded education and in private non-state funded education?
- Have there been any ruling by national offices for fair trading?
- Is competition law applicable on spin-offs? Is there any case law?
- Have there been case law or rulings on fusions of educational institutions, and the consequences for the competition and choice of educational provisions?

In this terms, the situation in Russia was following.

There were some precedents of unfair clauses. Antimonopoly authority repeatedly made judgments and determinations on the violation of the Law «On protection of the Consumer Rights» for universities, providing paid educational services. These judgements were based on unfair terms of the educational services agreements. The most famous precedents were related to the following three conditions. First concerns reasons for terminating the educational services agreement at the initiative of the university. These reasons were formulated without regard to the university statute and student's obligations contained therein and these reasons went beyond the educational process and could infringe on consumer legitimate rights. Second - the student fee for the current school year or semester (paid as a deposit) was not refundable in case of termination of the agreement on the initiative of the student. Third - the additional payment for the retaking of tests and examinations.

Such decisions and determinations of the Antimonopoly Service were sometimes appealed by the universities, but judicial authorities usually left without changes the invalidation of the agreement terms, infringing the rights of consumers, and confirmed the prohibition of obtrusion of additional works and services that met Clauses 1 and 3, Article 16 of the RF Law No. 2300-1 «On Protection of Consumer Rights» dated 7 February 1992.

Corresponding Decisions were made, mainly, in respect of private educational institutions. The most famous precedents were the Decision of the Federal Arbitration Court of the Northwest District, case No. A56-21085/01 dated 21 January 2002 (for Private Educational Institution «St. Petersburg Humanitarian University of Trade Unions»), the Decision of the Federal Arbitration Court of the Northwest District case No. A26-5499/03-27 dated 22 March 2004 (for Autonomous Non-commercial Association International Slavic Institute), the Decision of the Federal Arbitration Court of the Far Eastern District case No. F03-A73/03-2/492 dated 26 March 2003 (for Private Educational Institution «Far Eastern Institute of Legislation and Jurisprudence»), the Decision of the Federal Arbitration Court of the East-Siberian District case No. A33-20033/02-S6ao-F02-1921/03-S1 dated 2 July 2003 (for Private Educational Institution «Joint Institute for the Humanities»).

There rether were no such decisions of the Antimonopoly Service in respect of state universities, as well as other precedents relating to unfair agreement terms with state universities.

National Authority, which regulated trade, was the Ministry of Industry and Trade. It did not concern education. And national body that regulated competition (including fair trading) was the Federal Antimonopoly Service (FAS). It actually served as a supervisory organization in the sphere of providing educational services, too. The FAS managed the Expert Council on Development of Competition in Education and Science. The Expert Council was composed of market participants, representatives of non-profit associations and regulatory authorities. This practice allowed the FAS of Russian Federation estimate the situation in respective markets objectively and increased the transparency of decisions made by FAS of Russian Federation. FAS Decisions on the issues related to education could be called rulings. In particular, at one of the meetings, the Expert Council decided to begin developing recommendations for insurance (or provision of other forms of guarantee) of responsibility of educational institutions and organizations of secondary and higher vocational education in providing paid educational services. These recommendations should also be some kind of ruling.

There were no precedents of applicability of competition law to the spin-offs. HEIs and research institutes got the right to act as founders of small innovative enterprises only with the adoption of the Federal Law No. 217-FZ "On Amendments to Certain Legislative Acts of Russia on establishing business entities by budget research and educational institutions with an aim of practical application (implementation) of the results of intellectual activities" dated 2 August 2009. Prior to that, such firms were in the "grey zone" of the economy, actually outside the legal framework.

President of Russian Federation issued a Decree No. 716 «On the Federal universities» dated 7 May 2008, which was intended to establish national research universities by the RF Government in the form of autonomous institutions on the basis of the decision of the President of Russian Federation. The aim was to create in Russian Federation a network of research universities, in order to support the large-scale projects in the field of high-tech Russian economy sector, which would continue developing. The integration of educational institutions was one of the mechanisms for establishing the Federal universities.

The government deliberately tried to make these universities the most competitive in the country, appropriating funds for financing of innovative development programs. For the sake of it Federal universities received additional rights and freedom. In particular, in accordance with Federal Law No. 18-FZ «On Amendments to Certain Legislative Acts of Russia on Issues of Activities of Federal Universities» dated 10 February 2009, federal universities might implement educational programs based on their own, not state, standards and requirements. The Federal universities were established in the form of autonomous institutions. They got a right to establish Limited Liability Companies and Closed Joint-Stock Companies for the realization of their scientific attainments.

And the last steps of the ELA's method concerned liberalization of the education market with Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. But Russia is not an EU member, and therefore the directives of the European Parliament and the Council were not implemented in Russia's national legislation.

CONCLUSION

We can see that the legislation and court practice in Russia in the first decade of the 21st century enabled educational institutions to do some kinds of competitive activities. But the legislation and the corpus of case-law was too complicated. Some laws and decisions made by courts and authorities might contradict one another. Besides that, state-operated and private educational institutions had different rights and abilities. Thus, Russia needed to gather all the norms concerning commercial activities in educational sphere into one law. This law was adopted in 2012 and came into force in 2013.

The question of effectiveness of new Russian educational legislation in solving these problems should be the topic for following research in this field.

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